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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ORACLE USA, INC., a Colorado corporation;
and ORACLE INTERNATIONAL
CORPORATION, a California corporation,
Plaintiffs,

v.

RIMINI STREET, INC. , a Nevada corporation
and SETH RAVIN, an individual,
Defendants.

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Case No. 2:10-cv-0106-LRH-PAL

**RIMINI STREET, INC.'S AND SETH
RAVIN'S [PROPOSED] LIMITING
INSTRUCTION**

Judge: Hon. Larry R. Hicks

1 The Court requested that the parties submit a proposed limiting instruction concerning
 2 hypothetical questions asked during the depositions of Rimini clients about whether the clients would
 3 have been willing to contract for support with Rimini if they had known certain hypothetical facts.
 4 As mentioned in Oracle's submission, the parties were unable to agree on a proposed limiting
 5 instruction." (Dkt. 782 at 1). From Rimini's perspective, Oracle's instruction is insufficient because
 6 it does not even address the issue the Court identified—namely that the hypothetical "question[s] ...
 7 assume[] certain conclusions." 9/14/2015 Trial Tr. at 125:24-126:2 (rough). It also states that the
 8 facts assumed "are for the jury to decide," but it is *Oracle's burden* to establish those facts. By
 9 contrast, Rimini's proposed instruction (below) identifies in plain terms the concern with the
 10 testimony and instructs the jury on what it should do:

11
 12 "In the deposition excerpts you are about to see, there will be testimony about whether a
 13 Rimini customer would have been willing to contract for services with Rimini if that customer had
 14 known certain information about Rimini's services or conduct. The questions the witness answered
 15 were asked and answered prior to this court's ruling on certain questions of infringement. Thus,
 16 neither Rimini nor the clients answering the questions knew what this Court's ruling would be at the
 17 time the questions were asked.

18 You may not assume that anything suggested in the hypothetical questions is true or that the
 19 hypothetical provides enough factual context to prove the answer on the disputed issues in the
 20 case. Oracle must prove those disputed facts by a preponderance of the evidence."

21
 22 Authority: See 9/14/2015 Trial Tr. at 123:14-16 (rough) ("the questions as formed are admissible,
 23 but they invite a limiting instruction from the court"); *id.* at 125:24-126:2 ("the question also assumes
 24 certain conclusions. And I think the limiting nature of the instruction should be directed at that as
 25 well"); *Miller v. Village of Pinckney*, 2008 WL 4190619, at *1 (E.D. Mich. Sept. 9, 2008) (excluding
 26 responses to hypothetical questions where the questions were based on facts not present in the
 27 record); *Howard v. Rustin*, 2008 WL 1925102, at *3 (W.D. Pa. Apr. 30, 2008) ("While counsel may
 28 pose hypothetical questions to a lay witness, said questions must be based on facts of record.");

1 *United States v. Young*, 73 F.2d 690, 691 (9th Cir. 1934) (reversing trial court decision to
2 allow response to hypothetical question where it was “not based on a substantial statement of the
3 facts”).

4
5 DATED: September 16, 2015

Shook, Hardy & Bacon LLP

6 By: /s/ Robert H. Reckers

7 Robert H. Reckers

8 *Attorneys for Defendants*
9 *Rimini Street, Inc. and Seth Ravin*

10 **CERTIFICATE OF SERVICE**

11 The above document was e-filed with the Court’s CM/ECF system which sent Notice to all registered
12 users linked to this case.

13 /s/ Robert H. Reckers